

GOVERNMENT PROCUREMENT

The government procurement provisions of the U.S.-Peru TPA guarantee non-discriminatory access to the procurements of the largest purchasing entities in Peru. These procurements include areas where U.S. goods and services companies are very competitive, such as aerospace, energy, health care (including pharmaceuticals), construction, environmental technology, and information communication technology (ICT).

The Agreement covers purchases of most Peruvian central government entities, including all key ministries and significant state-owned enterprises. Peru also agreed to include all of its regional governments. Governments are typically the single largest purchasing entity in any market. Government procurement is generally ten percent to fifteen percent of a country's GDP. Peru's total GDP in 2004 was over \$68 billion, thus total procurement is estimated to be between \$7 billion and \$10 billion. U.S. companies will immediately benefit as the Peruvian government brings its laws and practices into compliance with the procurement obligations set forth in the U.S.-Peru TPA. Peru will eliminate a twenty percent price preference that has disadvantaged

U.S. firms. Even in those public procurements for which U.S. firms are already granted national treatment, some still complain of mismanagement and lack of transparency in the bid process. The U.S.-Peru TPA requires the use of fair and transparent procurement procedures, and the availability of timely and effective domestic review procedures to address complaints about the award of tenders.

U.S. exporters have complained that state-owned health and social services provider ESSALUD (one of Peru's largest procurers of pharmaceuticals) favored local suppliers to the detriment of U.S. firms. Immediately upon entry into force of this Agreement, ESSALUD's procurements, including pharmaceutical purchases that are above the Agreement's thresholds, will be open to U.S. suppliers.

Key U.S.-Peru TPA Procurement Provisions

- Peru's central and regional governments and certain state-owned enterprises cannot apply "buy local" provisions that discriminate against U.S. suppliers.
- Low-value contracts are excluded and set-asides on behalf of U.S. small and minority-owned businesses are not affected by the Agreement.
- The U.S.-Peru TPA imposes strong disciplines on government procurement procedures, such as requiring advance public notice of purchases and provision of information to all interested suppliers regarding covered procurement opportunities, as well as timely and effective domestic review procedures.
- The Agreement contains strong provisions to ensure integrity in government procurement. The Peruvian government must maintain a debarment system to declare ineligible suppliers that engage in fraudulent or illegal actions related to procurement.

As a result of the U.S.-Peru TPA, Peru will fully utilize an electronic procurement system to make tendering opportunities available to all potential suppliers. This will help U.S. exporters who had previously noted difficulties in obtaining information about government tenders.

The U.S.-Peru TPA also covers important state-owned enterprises such as PETROPERU (national oil company), ELECTROPERU (state-owned electricity company) and SEDAPAL (state-owned water company). All of these are major procurers that will be bound by the procurement obligations of the Agreement, including transparency and national treatment, enabling U.S. companies to compete on a level playing field.

The U.S.-Peru TPA clarifies that build-operate-transfer contracts (BOTs) are within the scope of the government procurement obligations in the Agreement. BOTs act as financing vehicles for large-scale construction projects and the building or rehabilitation of public work facilities. The U.S.-Chile Free Trade Agreement was the first free trade agreement to include this clarification and it is significant that the U.S.-Peru TPA also contains the guarantee that U.S. suppliers will receive non-discriminatory and transparent treatment when competing for BOT contracts.